Meeker Cooperative Light and Power Association *and* International Brotherhood of Electrical Workers, IBEW Local 160. Case 18–CA–16924

April 27, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND MEISBURG

On December 17, 2003, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Respondent filed exceptions and a supporting brief. The Charging Party filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Meeker Cooperative Light and Power Association, Litchfield, Minnesota, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Refusing to furnish the Union with information requested and necessary for the performance of its duties as exclusive collective-bargaining representative."

2. Substitute the following for paragraph 2(a).

"(a) Furnish International Brotherhood of Electrical Workers, IBEW Local 160, with the information it requested in its March 24, 2003 request, as modified on April 14, 2003, regarding whether certain bargaining unit work was contracted out for the period beginning September 16, 2000."

[1] We shall modify the judge's recommended order to make it clear that the Respondent is only required to provide the Union with subcontracting information for the period beginning September 16, 2000, as alleged in the complaint. We shall also modify the judge's recommended notice to add a provision for affirmative relief consistent with the judge's decision.

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. April 27, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to provide the Union with requested information relevant to the Union's performance of its collective-bargaining duties as your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL give the Union the information it requested in its March 24, 2003 request, as modified on April 14, 2003, regarding whether certain bargaining unit work was contracted out for the period beginning September 16, 2000.

MEEKER COOPERATIVE LIGHT AND POWER ASSOCIATION

Pamela W. Scott, Esq., for the General Counsel.
George E. Warner, Senior Consultant, of Plymouth, Minnesota, for the Respondent-Employer.
Richard A. Williams Jr., Esq., of Roseville, Minnesota, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. The parties agreed to waive a trial and stipulate the case directly to an administrative law judge for issuance of a decision.[1] A complaint and notice of hearing (the complaint) issued on September 15, 2003[2] by the Acting Regional Director for Region 18 of the National Labor Relations Board (the Board). The original charge was filed by International Brotherhood of Electrical Workers, IBEW Local 160 (the Charging Party or the Union) alleging that Meeker Cooperative Light and Power Association (the Respondent or the Employer), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that Respondent violated Section 8(a)(1) and (5) of the Act by its refusal to furnish the Union with necessary and relevant information concerning contracting out bargaining unit work.

On the entire stipulated record, and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a cooperative association engaged in the operation of an electrical cooperative providing retail electrical sales to its members from its facility in Litchfield, Minnesota, where it annually derived gross revenues in excess of $1 million and purchased and received products, goods, and services valued in excess of $50,000 from points outside the State of Minnesota. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

The Respondent is engaged in the retail sale of electricity to its members out of its facility in Litchfield, Minnesota. For approximately 20 years, the Union has been the exclusive collective-bargaining representative of an appropriate unit of Respondent's employees including all full-time and regular part-time journeyman and apprentice lineman, groundmen, and foreman. The parties are subject to a current collective-bargaining agreement effective from September 16, 2000, to September 15, 2005 (Jt. Exh. 1).

In January 2003, the Union made an inquiry to Respondent about some subcontracting work that it had been doing during that month.

On February 7, the Union sent two letters to Respondent concerning whether bargaining unit work had been contracted out (Jt Exhs. 2, 3). These letters also constituted grievances alleging the loss of bargaining unit work. On February 20, Respondent denied the grievances (Jt Exh. 4).

On March 24, the Union sent a letter to Respondent requesting information about the subcontracting (Jt Exh. 5). The request covered the period 1995 to the present. Respondent replied by letter dated March 25, denying the request for the information (Jt Exh. 6). On April 14, union counsel wrote the Respondent and narrowed the information request to correspond to the term of the parties' collective-bargaining agreement. After the board of directors considered the matter, Respondent in June 2003, notified the Union that the information requested in March that was later modified in April 2003, would not be provided.

B. The Position of the Parties

The parties agree that there has been a past practice of subcontracting, however they disagree to its extent. The Respondent argues that it has always had the right to subcontract all types of work without limitation. The Union counters that while the Respondent has the right to subcontract certain types of work, it is not permitted to subcontract work that normally is performed by bargaining unit employees. Indeed, the Union asserts that on two occasions, July 2002 and January 29, the Respondent has subcontracted work to outside contractors that was within the jurisdiction of the parties' agreement and should have been performed by bargaining unit employees.

The Union argues that it cannot resolve the question of whether bargaining unit work has been subcontracted in violation of the parties' agreement and/or past practice, unless it is provided with the requested information. Thus, the Union needs the information to decide how or whether to proceed with the subject grievances or any other grievance.

The Respondent assets that the grievance procedure requires that the Union identify a specific provision of the parties' agreement to have been violated, and that the subject grievances do not meet this requirement. Further, the Respondent denies that the parties' agreement has been violated because the work subcontracted by it on the two occasions, if it occurred, was not a violation of the parties' agreement or past practice.

C. Analysis

In *Fiberboard Paper Products Corp. v. NLRB,* 379 U.S. 203 (1964), the Supreme Court upheld the Board's ruling that an economically founded decision to subcontract maintenance work was a mandatory subject of bargaining. Likewise, the Board has held that a union is entitled to requested information "if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties as the employees' exclusive bargaining representative." *Southern Nevada*

[1] By Order dated October 9, 2003, the hearing was postponed indefinitely.
[2] All dates are in 2003 unless otherwise indicated.

Builders Assn., 274 NLRB 350, 351 (1985). This liberal discovery-type standard nevertheless contains an important limitation: the data must be of use in fulfilling statutory duties. The "duty to furnish . . . information stems from the underlying statutory duty imposed on employers and unions to bargain in good faith with respect to mandatory subjects of bargaining." *Cowles Communications, Inc.*, 172 NLRB 1909 (1968). In *Daimler Chrysler Corp.*, 331 NLRB 1324 (2000), enfd. 288 F.3d 434 (D.C. Cir. 2002), the Board held that the employer's duty to bargain includes the obligation to provide information that a union needs for the processing of grievances and the investigation of potential grievances.

The arguments advanced by the Respondent in the subject case are misplaced. In this regard, the Respondent does not address the necessity or relevancy of the requested information. Rather, the Respondent's reasoning for not providing the information is that the underlying grievances do not have merit.[3] While ultimately that may be the case once the grievances are heard by an arbitrator under the parties' grievance and arbitration procedure, the issue in this case is whether the Union needs the information so it intelligently can determine whether it should proceed to arbitration or file additional grievances. In these circumstances, I find that the information is relevant and necessary to the Union's interest in policing the Respondent's compliance with the terms of the parties' collective-bargaining agreement. *Crowley Marine Services*, 329 NLRB 1054, 1060 (1999), enfd. 234 F.3d 1295 (D.C. Cir. 2000). Accordingly, the Respondent has an obligation to supply the requested information and its refusal to do so violates Section 8(a)(1) and (5) of the Act. *Reiss Viking*, 312 NLRB 622 (1993).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all relevant times, the Union has been the exclusive collective-bargaining representative of the following employees of Respondent in an appropriate bargaining unit within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time journeyman and apprentice lineman, groundmen, and foremen employed by Respondent at or out of its Litchfield, Minnesota facilities: excluding office clericals, and guards and supervisors as defined in the Act, as amended.

4. By failing and refusing to furnish the Union with the information requested in its March 24, as subsequently modified on April 14, 2003 information requests, the Respondent has failed to fulfill its statutory obligations and has thereby engaged in, and is, engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Meeker Cooperative Light and Power Association, Litchfield, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Brotherhood of Electrical Workers, IBEW Local 160, by refusing to furnish them with the information requested in its March 24 and April 14, 2003 information requests regarding whether certain bargaining unit work was contracted out.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish International Brotherhood of Electrical Workers, IBEW Local 160, with the information it requested in its March 24 and April 14, 2003 information requests regarding whether certain bargaining unit work was contracted out.

(b) Within 14 days after service by the Region, post at its facility in Litchfield, Minnesota copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 24, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official

[3] While the Respondent argues that since the parties' agreement does not contain an article relating to contracting out work, it has the absolute right to contract out work as long as the action is performed in good faith, it ignores art. III of the agreement that covers working rules, hours, wages, and other definite conditions of employment for all employees covered by the agreement. Thus, the grievances concern a controversy arising over the interpretation of the parties' agreement and involve a mandatory subject of bargaining.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 23, 2003

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